

EXCERPTED DEPO. TR.
JOSE GOUVEIA

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

MAYRA P. PENA,

PLAINTIFF

vs.

C.A. NO.: 15-CV-00179-S-LDA

HONEYWELL INTERNATIONAL INC.,

DEFENDANT.

DEPOSITION OF JOSE GOUVEIA, taken on
behalf of the Plaintiff, pursuant to Notice of
Deposition, at the Law Office of NIXON PEABODY LLP, One
Citizens Plaza, Suite 500, Providence, Rhode Island,
scheduled at 7:00 a.m. on Saturday, December 3, 2016,
before Heidi H. Jamiel, a Notary Public in and for the
State of Rhode Island.

-00o-

COPY

1 other?

2 A. Preferences varied, reasons varied. Just like
3 anybody else, you prefer to do work in one area versus the
4 other.

5 Q. Can you recall any reasons that employees provided
6 for wanting to work in one area as opposed to another?

7 A. Sure, absolutely. Some preferred molding because
8 it was, it was, again it was easier there. It was more
9 structure. It was a better structure there. It was more of
10 an easier flow. Others preferred respiratory. One of the
11 things that I recall was the respiratory may have allowed a
12 little bit more of interaction, social interaction for
13 whatever reasons. The molding was a coordination of, at
14 times, most of the times, two people working together.
15 Respiratory you would have a group working together, but you
16 were somewhat responsible mostly for your assembly,
17 depending exact what areas. It may have varied from area to
18 area, but those were the main things that would come up.

19 Q. My understanding from Mr. Conor's deposition or
20 Mr. Ryan's deposition was that in the injection molding
21 room, the employee could not control the flow of the work,
22 that it was automated as opposed to the respiratory area
23 where the employee could control the flow of the work; is
24 that accurate?

25 A. I would say yes, yeah.

1 Q. Okay. Were there any employees that preferred
2 not, that expressed that they did not want to work in the
3 injection molding room because they couldn't control the
4 flow of work?

5 A. No.

6 Q. No?

7 A. No.

8 Q. Okay.

9 A. Not to my knowledge.

10 Q. Okay. So, so Fermin came to you and said Pena
11 doesn't want to work in the molding room; correct?

12 A. Correct.

13 Q. And then you had a discussion with Pena about
14 this; right?

15 A. Correct. Yes.

16 Q. Was Fermin present during this conversation?

17 A. I believe the first one, I don't recall correctly,
18 but I believe no.

19 Q. Okay. And Pena doesn't speak English; correct?

20 A. She speaks some English, she prefers Spanish.

21 Q. Do you speak Spanish?

22 A. Fluently.

23 Q. Fluently. Did you converse with Pena in English
24 or Spanish?

25 A. Both, mostly Spanish.

1 Q. Okay. Did you ask Pena why she refused to work in
2 the molding room?

3 A. I did.

4 Q. What did she say?

5 A. I don't like to work there.

6 Q. Did she say why?

7 A. No, I don't recall.

8 Q. All right. Let's look at -- and when did this
9 conversation with Pena take place about her not wanting to
10 work in the molding room?

11 A. Around that time, I would say around the 21st.

12 Q. Okay. Was it the same day?

13 A. Yes.

14 Q. Okay. Let's look at the fourth full paragraph,
15 Exhibit 1, I followed up with Mayra Pena and she said that
16 no one could force her to do a job she does not like and
17 that she felt nervous when she was working in molding.

18 You wrote that; right?

19 A. Uh-huh.

20 Q. Did you ask -- so Pena told you she felt nervous
21 working in molding?

22 A. (Witness indicates.)

23 Q. Did you ask her why she felt nervous?

24 A. I did.

25 Q. What did she say?

1 A. I just felt nervous. I just feel nervous. Then I
2 ask questions as to, are you fully trained? Do you feel you
3 received the necessary training? Do you feel it's too hard?
4 Help me understand why you feel nervous.

5 Q. And what did she say?

6 A. I just feel nervous. I don't want to work there.
7 I don't like working there. Nobody's going to force me to
8 work there.

9 Q. Did you find it unusual that an employee would
10 tell you that she felt nervous working in a certain area?

11 MR. MC NAMARA: Objection.

12 Q. BY MR. GAGLIARDI: You can answer. That's what we
13 lawyers do, we object.

14 A. That's my lawyer.

15 Q. You can answer.

16 MR. MC NAMARA: No, you can answer the question.

17 THE WITNESS: Ask me again, please.

18 MR. GAGLIARDI: Can you repeat it, please.

19 (Record read.)

20 THE WITNESS: No.

21 Q. BY MR. GAGLIARDI: Okay. Had any employees other
22 than Mayra Pena ever told you that they did not want to work
23 in one area of the plant?

24 A. I believe you asked me that two times, and the
25 answer was no.

1 Q. Nobody --

2 A. No.

3 Q. -- except her?

4 A. I found it unusual though, an employee indicating
5 that I don't want to work there. I will not work there.
6 Nobody can force me to work there, when that's part of the
7 employee's job, that I found it unusual.

8 Q. Okay. Then the next paragraph -- well, strike
9 that.

10 Did you formulate an opinion as to why Pena did
11 not want to work in the molding room at that point?

12 A. No.

13 Q. All you knew is she didn't want to work there and
14 she felt nervous; right?

15 A. Correct.

16 Q. So then the next paragraph you write, On the same
17 conversation, Mayra added that she was diabetic and the
18 breaks were 15 and 30 minutes apart from her lunch, and she
19 could not be 15 minutes late for her coffee, nor 30 minutes
20 late for her lunch break.

21 Did you formulate the opinion that Mayra Pena did
22 not want to work in the molding room because of her
23 diabetes?

24 A. No.

25 Q. Okay. Do you know why Pena began talking about

1 her diabetes at this point?

2 A. No.

3 Q. So Pena told you she did not want to work in the
4 molding room because she felt nervous, and then she brought
5 up her diabetes; right?

6 A. Right.

7 Q. Okay. And then you write here at the end of that
8 sentence -- strike that.

9 Pena said she was going to get a doctor's note;
10 right?

11 A. Yes.

12 Q. Yes. Did you ask her why she was going to get a
13 doctor's note?

14 A. No. I don't recall if I asked, but I want to say
15 no.

16 Q. When she told you that she was going to get a
17 doctor's note right after telling you she did not want to
18 work in the molding room, did you formulate the opinion that
19 perhaps the reason why she didn't want to work in the
20 molding room was because of a medical condition?

21 MR. MC NAMARA: Objection. Go ahead.

22 THE WITNESS: I will not answer that. Ask me
23 again.

24 MR. GAGLIARDI: Can you read it back, please.

25 (Record read.)

1 THE WITNESS: Not at the time, I didn't, no, other
2 than being diabetic, and I'm prediabetic myself, I didn't
3 form the opinion to that being the reason why she didn't
4 want to work there.

5 Q. BY MR. GAGLIARDI: All right. So --

6 A. Her first comment to me was, I don't want to work
7 there. Nobody can force me to work there.

8 Q. Okay. But she also said she felt nervous, she was
9 diabetic, and that she was going to get a doctor's note;
10 right?

11 A. Yes.

12 Q. But you did not formulate the opinion that the
13 reason she didn't want to work in the molding room was
14 because of a medical condition?

15 A. I did not have information at that time or was
16 able to assume anything based on what the employee was
17 telling me.

18 Q. Okay. You said you're diabetic?

19 A. Prediabetic.

20 Q. Type I or Type II?

21 A. II.

22 Q. Okay. So how did you leave things with Pena and
23 Fermin on that day, on February 22, 2013 -- sorry,
24 February 21, 2013?

25 A. If I recall correctly, Pena did not go to molding.

1 like to do.

2 Q. BY MR. GAGLIARDI: So you believed that it was
3 just a matter of personal preference that she didn't want to
4 work in the molding room, you didn't at the time believe it
5 was because of any medical condition --

6 MR. MC NAMARA: Objection.

7 Q. BY MR. GAGLIARDI: -- or did you?

8 A. I did not.

9 Q. Did not what?

10 A. I did not have any assumptions other than what she
11 indicated, that she was not going to work there. I did not
12 have any assumptions. I asked why, I asked the first
13 questions as to why? Were you trained? I'm not going to
14 ask an employee or Mayra in that case, are you sick and
15 that's why you don't want to work there? I'm not going to
16 ask that type of question. Were you trained? That was my
17 first question to her.

18 Q. Did you ask her if she had a medical condition
19 that would inhibit her ability to work in the molding room?

20 A. I did not.

21 Q. Why not?

22 A. Why would I assume such thing?

23 Q. Well, she said it made her feel nervous, she said
24 she had diabetes, and that she said she was going to get a
25 doctor's note. So my question to you is, after hearing

1 A. I did not assume that.

2 Q. Okay. Even though this is the second time she's
3 telling you she's going to get a doctor's note; right?

4 A. Correct.

5 Q. Okay. Then her husband came in the same day with
6 a letter from her doctor; right?

7 A. Correct.

8 Q. Okay. Did you read the doctor's note?

9 A. Yes.

10 Q. Okay. And you write on the second page, the top,
11 you write, I told him, which is Mayra's husband, that none
12 of us were against Mayra, we are trying to make her
13 understand that we have made an honest effort in trying to
14 accommodate her work preference when it was possible, but
15 going forward this may not always be possible and she needs
16 to realize this creates an employee relations issue with
17 other employees.

18 Right, so you write here, you're trying to
19 accommodate her work preference. So at this point, tell me
20 if you agree with me that you believe the reason she didn't
21 want to work in molding was simply her own personal
22 preference; right?

23 MR. MC NAMARA: Objection. Go ahead.

24 THE WITNESS: Ask that question, rephrase that
25 question.

1 Right, and so did that clear up why, in your mind,
2 why Pena did not want to work in molding?

3 A. No.

4 Q. No, okay. You said that this doctor's note was
5 vague. What is vague about it?

6 A. The doctor's note, when there are any restrictions
7 or any conditions, he has a better understanding where to
8 such-and-such employee is under a restrictive duty for this
9 period of time, and there's limitations outlined more
10 objectively. In this particular case, when I got the
11 doctor's note, I read it. I understood what was said there,
12 but it was vague for us to help understand Mayra's situation
13 in order to try to accommodate her. I escalated the
14 doctor's note to the medical team at Honeywell, to Jackie
15 Rolfs, who are medical professionals that would then be in
16 contact with her doctor.

17 Q. After reading this doctor's note, did you
18 understand that Pena's doctor was telling you that she
19 suffers from anxiety?

20 A. I escalated this note --

21 Q. That's a yes or a no question.

22 A. Yes. I escalated this note to the medical team at
23 Honeywell who are professionals that would be in contact
24 with her doctor or doctors and go over exactly what was the
25 condition.

1 Q. You've done a great job answering my questions so
2 far, that was not a proper answer.

3 MR. MC NAMARA: Objection.

4 Q. BY MR. GAGLIARDI: So these are just yes or no
5 questions. So my question is, after reading this letter,
6 did you understand that Pena's doctor was informing her
7 employer that she has anxiety; yes or no?

8 A. Yes.

9 Q. Okay. And that the doctor's note was informing
10 you or whoever was reading it that her anxiety gets worse
11 when she goes into the molding room, you understand that;
12 right?

13 A. According to what was stated, yes.

14 Q. Okay. That's pretty clear; correct?

15 A. Yes.

16 Q. Okay. And the last sentence of the first
17 paragraph he writes, I am requesting that you assist her in
18 other placements than in this setting, as her condition is
19 being directly exacerbated by working conditions there.

20 How did you interpret that sentence?

21 A. That the doctor has requested to assist her
22 because in assessments, in conversations with his patient or
23 her patient, his patient may have then made that assessment
24 that his client or his patient would recommend to go to
25 other areas.

1 Q. Okay.

2 A. At that point, I did not have any other
3 information that I could better assist Mayra as an employee
4 and I escalated this to the medical team.

5 Q. Okay. Sir, doesn't the last sentence, isn't the
6 doctor asking the employer to just put her in a different
7 setting; doesn't that say that?

8 A. Yes.

9 Q. Okay. So after you read this note, you understood
10 that Pena's doctor was informing her employer she's got
11 anxiety, the anxiety gets worse when she's in the molding
12 room, and he's asking you to put her somewhere else; right?

13 A. Correct.

14 Q. Correct, okay. And he writes in the second to
15 last paragraph, She is completely capable of working in
16 other settings?

17 A. Correct.

18 Q. You read that; right?

19 A. Correct.

20 Q. And you would interpret that to mean she can work
21 in other departments; right?

22 A. She has been working, she was working in other
23 departments.

24 Q. But you interpreted that, you understood that
25 statement to mean that the doctor was informing the employer

1 that his patient is capable of working in other departments
2 other than molding; right?

3 A. Correct.

4 Q. Okay. So on March 8, 2013, did Pena, where did
5 she work on that day?

6 A. I don't recall.

7 Q. Did she work in molding?

8 A. No.

9 Q. Okay. Why didn't, did you -- all right. How did
10 things -- strike that.

11 The second, the last sentence of the second full
12 paragraph, We then recommended that we don't have work in
13 another area and that's the only area that needs help and in
14 this case, she needs to go home for refusing to do her job.

15 There was no other work to be done in the plant
16 other than in the molding room?

17 A. The molding room, at the time, was in higher
18 demand and not the other areas.

19 Q. Okay.

20 A. If I recall correctly, at that time, we were
21 actually laying off temporary workers.

22 Q. You were what?

23 A. Laying off temporary workers.

24 Q. Why didn't you just take another worker -- I'm
25 sorry, strike that.

1 Q. Is that why you rejected this note, because she
2 was being disrespectful to you?

3 A. Not at all. I wrote it in there to describe the
4 way she was reacting, not base on any decision that was
5 made.

6 Q. So where did Mayra Pena work on March 8, 2013?

7 A. I don't recall the specific assembly line.

8 Q. At some point, was she sent home?

9 A. If I recall correctly, she opted to go home. If I
10 recall correctly, I said, you can go home if that's how you
11 feel.

12 Q. Well, let's see. Let's look at the last sentence
13 again on paragraph 2 of page 2, We then recommended we don't
14 have work in another area and that's the only area that
15 needs help, and in this case she needs to go home for
16 refusing to do her job.

17 A. She had stated prior to that, I will not work in
18 molding. I will leave and go home. That's the only area
19 right now that we really need help, in molding, and that's
20 how it was stated.

21 Q. So tell me if this is accurate.

22 A. Do you mind if I move again?

23 Q. Not at all.

24 A. Sun is right in my eyes. Thank you.

25 Q. Mayra Pena was told, either you work in molding or

1 otherwise you wouldn't have recommended she go on TDI;
2 right?

3 MR. MC NAMARA: Objection.

4 THE WITNESS: She said she was home. She was not
5 feeling well, for that, just being home, nothing to do with
6 molding. Apparently what she was saying, she was not
7 feeling well, and she did not relate to the reason why she
8 was not at work, and the reason why she did not want to work
9 at molding. She just said that she was home. So the
10 doctor's note, again, did not indicate there was any other.
11 There was a doctor note that was pending, that was
12 communication between her doctor or her team that was
13 treating her to go over with the Honeywell team. They did
14 not communicate. Her doctors did not follow through for a
15 while, for a long time. I would not assume there was
16 anything that was happening or not.

17 Q. BY MR. GAGLIARDI: Okay.

18 A. That was a case that was pending. In order to
19 assist the employee, if that's what she wanted to do, the
20 company offered short-term disability. The state offers
21 TDI. If there was anything that I was unaware of, I wanted
22 her to know that she had that option, if there was anything
23 other than the case at hand.

24 Q. Okay. Then the next paragraph, March 22, 2013,
25 today, I called Mayra to let her know she would be receiving

1 right?

2 A. There was no other reason to interpret other than
3 just to hear what the employee was stating.

4 Q. Okay. And you didn't believe the reason she
5 didn't want to work there was because of a medical
6 condition; right?

7 A. She never indicated --

8 MR. MC NAMARA: Objection, asked and answered.
9 You've asked this several times.

10 Q. BY MR. GAGLIARDI: She never --

11 A. She never indicated that she's got a medical
12 condition other than I do not want to work there. I don't
13 like working there.

14 Q. Okay.

15 A. Nobody can force me to work there.

16 Q. That's fine.

17 A. Throughout this entire process, she never related
18 to any medical condition.

19 Q. Okay. So let's look at Exhibit 4, which is a
20 Reasonable Accommodation Request Form. You're familiar with
21 this document?

22 A. Yes, I am.

23 Q. Okay. Did you, I'm going to represent to you on
24 page 2, it's dated April 2, 2013, did you review this, have
25 you seen this document before today?